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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~185~~ 81.

HARRY J. JAQUITH, TRUSTEE IN BANKRUPTCY OF WILLIAM S. FRANKLIN, BANKRUPT, APPELLANT,

vs.

CLARENCE W. ROWLEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED APRIL 18, 1901.

(18,115.)

(18,115.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 297

HARRY J. JAQUITH, TRUSTEE IN BANKRUPTCY OF WILLIAM S. FRANKLIN, BANKRUPT, APPELLANT,

vs.

CLARENCE W. ROWLEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1901.

a District Court of the United States, District of Massachusetts.
In Bankruptcy.

In the Matter of WILLIAM S. FRANKLIN, Bankrupt. No. 3327.

APPEAL RECORD.

1 *Trustee's Petition in Equity v. C. W. Rowley et al.*

Filed in Court Feb. 11, 1901.

District Court of the United States, District of Massachusetts.

In the Matter of W. S. FRANKLIN, Bankrupt. In Bankruptcy. No. 3327.

Petition in Equity.

Respectfully represents H. J. Jaquith, that he is the trustee in the above-entitled case, that the bankrupt was duly adjudicated such on the 15th day of August A. D. 1900, that your petitioner was appointed trustee on the 18th day of September A. D. 1900, and his bond was approved on the 21st day of September, 1900.

That on the date of said adjudication, there were pending in the superior court of Massachusetts for Middlesex county a suit of E. W. Thayer *vs.* The Bankrupt in which a bail bond was taken on the 14th day of November A. D 1899, and that to protect his surety on said bail bond one Joseph P. Silsby, Jr., the bankrupt deposited in his hands the sum of one hundred and forty-eight dollars to be held to indemnify him in case the bankrupt avoided said bail bond, and also a suit of E. F. Flanders *vs.* The Bankrupt in which case a bail bond was given on the 14th day of November A. D. 1899, and to protect his surety, one, Joseph P. Silsby, Jr., the bankrupt deposited in his hands the sum of one hundred and twenty-five dollars to be held to indemnify him in case the bankrupt avoided said bail bond, that the counsel for both Thayer and Flanders is one Clarence W. Rowley, a member of the bar of this court, that said Rowley appeared at the first meeting of the creditors of the bankrupt and proved the claim of the aforesaid Emily W. Thayer and participated in said meeting, and that said claim is now pending before the referee Honorable L. G. Farmer, for allowance.

2 That before your petitioner had filed his bond, said Rowley called upon him and asked to have the suits disposed of so that he could get the money from the surety, that your petitioner replied that several creditors, among them, the aforesaid Thayer had requested an examination of the bankrupt, and that until that was had your petitioner did not feel that he had sufficient information to act, that about a week later, your petitioner had another conversation with said Rowley at the Suffolk county court-house, at which the same request was made, and the same answer given, that thereafter said Rowley made no request to examine the bankrupt.

That on January 17, 1901, your petitioner as counsel for the bankrupt filed interrogatories to the aforesaid plaintiffs, and on the 18th day of January, 1901, he received a letter from the aforesaid Rowley saying that he had taken judgment and execution in said suits, a copy of the letter is annexed marked A.

That thereupon your petitioner continuing to act for said Franklin for the benefit of his creditors filed petitions in both of said cases praying that the judgments be vacated and execution be returned, copies of said petitions are annexed marked B & C.

That on the 7th day of February A. D. 1901, the superior court for Middlesex county ordered the petitions dismissed, a copy of the order of the court is annexed marked D.

Your petitioner further represents that the action of said Rowley and said Thayer and Flanders, in further prosecuting said suits in the State courts was contrary to the bankruptcy act, that the further prosecution of the suit of Thayer after proving the debt in this court was an attempt to oust this court of its jurisdiction and is a contempt of this court, a copy of the proof of said claim is annexed marked E.

That the obtaining of the judgments without notice to your petitioner, under the circumstances herein set out was a fraud
3 upon the creditors of the bankrupt, this court not having ordered or authorized any defense of said suits.

Wherefore your petitioner prays:

1. That said Clarence W. Rowley, E. W. Thayer and E. F. Flanders, their agents and attorneys be enjoined from collecting said judgments or making any levy under said executions or taking any further proceedings thereon pending the further and final determination of this court.

2. That said Joseph P. Sibley, Jr. be enjoined from paying over the money in his hands pending the further orders of this court.

3. That said C. W. Rowley and E. W. Thayer be ordered to show cause why they should not be adjudged in contempt of this court.

4. That said C. W. Rowley and E. W. Thayer be ordered to pay the costs incurred by your petitioner in the State courts occasioned by their fraudulent acts set out herein.

H. J. JAQUITH.

SUFFOLK, *ss:*

BOSTON, *February* 11, 1901.

Personally appeared the above-named H. J. Jaquith and made oath that he has read the above petition subscribed by him and that the facts alleged therein are true.

Before me,

THOMAS J. BARRY,
Justice of the Peace.

4

JAN. 18, 1901.

H. J. Jaquith, Esq., 48 Congress St., Boston, Mass.

DEAR SIR: Your notice of filing interrogatories in the cases of Thayer and Flanders *vs.* Franklin is received. These cases went to judgment some time ago, no suggestion of bankruptcy being filed

and no one appearing for the defendant when the cases were reached for trial.

Very truly yours, CLARENCE W. ROWLEY.

Exhibit A.

5 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss*:

Superior Court.

FRANKLIN
vs.
FLANDERS.

Now comes the petitioner and moves that the judgment entered in this court in the case of Flanders v. Franklin, on the 18th day of October A. D. 1900 be vacated and that the execution issued be ordered returned, and that further proceedings be stayed for twelve months from August 15, 1900, and for grounds and for this his motion, he says that on the 15th day of August, 1900, he was adjudicated a bankrupt in the district court of the United States for the district of Massachusetts.

That Clarence W. Rowley, the attorney of record for the plaintiff in this suit, was present and took part in the first meeting of the creditors, and that the plaintiff in this action had actual knowledge of the said bankruptcy proceedings.

That the terms of the national bankruptcy law, section 11, *a*, are as follows: Suits by and against bankrupts.—A suit which is founded on a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudicated a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

That, nevertheless, the plaintiff in said suit without informing this court of the bankruptcy of the defendant on or about October 5, 1900, obtained a default and an execution was issued and levied on property of the defendant in the hands of Joseph P. Silsby, Jr. a deputy sheriff for the county of Suffolk.

And the defendant says that said judgment was fraudulently obtained, and is null and void.

Wherefore, he prays that an order to return the execution into court may be issued forthwith.

By his attorney, —— ——.

Exhibit B.

6 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss.*:

Superior Court.

FRANKLIN
vs.
THAYER.

Now comes the petitioner and moves that the judgment entered in this court in the case of Thayer *v.* Franklin, on the 18th day of October A. D. 1900 be vacated and that the execution issued be ordered returned, and that further proceedings be stayed for twelve months from August 15, 1900, and for grounds and for this his motion, he says that on the 15th day of August, 1900, he was adjudicated a bankrupt in the district court of the United States for the district of Massachusetts.

That Clarence W. Rowley, the attorney of record for the plaintiff in this suit, was present and took part in the first meeting of the creditors, and that the plaintiff in this action had actual knowledge of the said bankruptcy proceedings.

That the terms of the national bankruptcy law, section 11, *a*, are as follows: Suits by and against bankrupts.—A suit which is founded on a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudicated a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

That, nevertheless, the plaintiff in said suit without informing this court of the bankruptcy of the defendant on or about October 5, 1900, obtained a default and an execution was issued and levied on property of the defendant in the hands of Joseph P. Silsby, Jr. a deputy sheriff for the county of Suffolk.

And the defendant says that said judgment was fraudulently obtained, and is null and void.

Wherefore, he prays that an order to return the execution into court may be issued forthwith.

By his attorney, —— ——.

Exhibit C.

7 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss.*:

No. 7834, 7835.

SUPERIOR COURT, *February* 7, 1901.

H. J. Jaquith, Esq., *Esq.*:

In FRANKLIN
vs.
THAYER.

FRANKLIN
vs.
FLANDERS.

The court has directed the following entry to be made:
Petition dismissed.

Very truly yours, THEO. C. HURD, *Clerk.*

Exhibit D.

8 Wm. S. Franklin to Emily W. Thayer, Dr.

March, 1898. To services in going from Shirley, Mass. to New Bedford, Mass. for you, assisting in preparation of case of Adams *v.* Swift, attending the trial thereof without being summoned, and various services rendered in said case as per agreement..... $150

9 In the District Court of the United States for the District of Massachusetts.

In the Matter of WM. S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

At Boston, in said district of Massachusetts, on the eighteenth day of September, A. D. 1900, came Emily W. Thayer, of Boston, in the county of Suffolk, in said district of Massachusetts, and made oath, and says that Wm. S. Franklin, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of one hundred and fifty dollars; that the consideration of said debt is as follows:

Services in attending court at New Bedford, Mass. assisting in preparing a case of Adams *v.* Swift for trial, and travelling from Shirley, Mass. to New Bedford, according to agreement with said W. S. Franklin, March, 1898, as per acc't annexed

that no part of said debt has been paid; that there are no set-offs or counter claims to the same; that no note has been received for such account, and no judgment rendered thereon; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt

whatever, except a bail bond for the appearance of said Franklin before the superior court for Middlesex county, Massachusetts, to answer to said Thayer in an action to recover the above claim, and a claim upon $273 deposited with the surety on said bond by said Franklin to be applied to any judgment recovered, which security she does not waive.

MRS. EMILY W. THAYER, *Creditor.*

Subscribed and sworn to before me this eighteenth day of September, A. D. 1900.

CLARENCE W. ROWLEY,
Justice of the Peace.

10 CLARENCE W. ROWLEY,
Attorney, 373 Washington Str.

I hereby certify that the above is a true copy of a claim proved before me, but not yet allowed in the case of said bankrupt.

LEWIS G. FARMER,
Referee in Bankruptcy.

Boston, February 4, 1901.

Exhibit E.

11 UNITED STATES OF AMERICA, *Massachusetts District,* } ss:

[SEAL.] The President of the United States of America to the marshal of our district of Massachusetts or to either of his deputies, Greeting:

We command you that you summon Clarence W. Rowley and Joseph P. Silsby, Jr., both of Boston in the district of Massachusetts, and Emily W. Thayer and E. F. Flanders, both of said district, (if they may be found in your precinct,) to appear before the district court of the United States, to be holden at Boston, within and for the Massachusetts district, on Wednesday, the 13th day of February, at twelve o'clock, m., then and there to show cause, if any they have, why an injunction should not issue against them restraining them from collecting any judgment, or levying any execution, or paying over any money held as security in these suits of E. W. Thayer, and E. F. Flanders *vs.* W. S. Franklin a bankrupt duly adjudicated such by this court, as prayed for by Harry J. Jaquith, the trustee of said bankrupt estate duly appointed by this court in the bill of complaint this day filed in said court.

Hereof fail not, and make due return of this writ, with your doings thereon, into our said court.

Witness, the Honorable Francis C. Lowell, at Boston aforesaid, the eleventh day of February in the year of our Lord one thousand nine hundred and one.

WILLIAM NELSON,
Deputy Clerk.

(*Marshal's Return.*)

UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

BOSTON, *February 12th*, 1901.

Pursuant hereunto, I have this day summoned the within-named Rowley and Silsby, Jr., to appear before the district court of the United States, as within directed, by giving in hand to said Rowley this day at Boston a true and attested copy of this precept. I also on the same day left at the last and usual place of abode of said Silsby, Jr., 766 Shawmut Ave., Boston, a true and attested copy of this precept, made search for within-named Thayer and Flanders and was unable to find them in my district.

J. H. WATERS,
Deputy U. S. Marshal.

Fees.

Service	$4.00
Travel	.12
	4.12

12 District Court of the United States, District of Massachusetts.

In the Matter of WILLIAM S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

Opinion.

February 20, 1901.

LOWELL, *J.*:

At the date of the adjudication there was pending against the bankrupt in a State court a suit in which a bail bond had been taken. To protect the surety on that bond, the bankrupt had deposited with him a sum of money. After adjudication, the plaintiff in the suit proceeded to judgment and took out execution, which he is seeking to enforce against the surety on the bail bond, but not against the bankrupt himself. The trustee seeks to restrain the enforcement of the judgment and execution, alleging that he had a good defence to the action, which he was prevented from presenting to the State court by a breach of an agreement made with him by the plaintiff's counsel.

By section 11 of the bankrupt act, this court is given power to stay suits against the bankrupt until twelve months after the date of adjudication, or until the question of discharge is determined. The State court, however, following the decision in Rosenthal *v.* Nove, 175 Mass. 559, held that, for the purpose of enforcing the liability on the bail bond, the case should proceed to judgment. The decision of the supreme court of Massachusetts is not opposed to the decisions of this court. *In re* Marshal Paper Co. 95 Fed. Rep. 419; same case on appeal, 102 Fed. Rep. 872. It was

contended, however, that, in the case at bar, there was in the hands of the surety money of the bankrupt, and that if the
13 plaintiff in the State court were permitted to enforce the bail bond, the surety on that bond would be entitled to apply to his indemnity the money deposited by the bankrupt, and so the bankrupt's estate would be diminished. It is hard to see how this court can compel the State court to try again the liability on the bond. The liability of the surety is a question within the jurisdiction of that court. If, indeed, it be taken that the judgment of that court was recovered by means of a fraud committed upon the trustee, it may be that this court has jurisdiction to restrain the enforcement of the judgment until the trustee has had opportunity to ask the State court to reopen the matter, and give him a hearing: but in this case, the trustee has already asked the State court for a rehearing, and has urged, or has had an opportunity to urge upon that court the alleged improper proceeding of the plaintiff's counsel. The State court has refused to reopen the case, and this court, even if it has jurisdiction to do so, is not disposed to review the decision of that court upon the facts. That the result of a suit brought against the bankrupt in a State court may thus result in the diminution of his estate applicable in bankruptcy to the payment of his debts, is not a conclusive reason for restraining the prosecution of that suit, when the personal liberty of the bankrupt is not threatened, and when the judgment sought for is not to be enforced against him, but against some one else. The case of *In re* Horton, 102 Fed. Rep. 986, though not precisely in point, is, in many respects, much like the case at bar.

14 In the District Court of the United States for the District of Massachusetts.

In the Matter of WILLIAM S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

At Boston, in said district, on the 21st day of February, A. D. 1901, upon the petition of Harry J. Jaquith, trustee in bankruptcy in the above-named matter, filed in the office of the clerk of said court on the 11th day of February, A. D. 1901, praying that a restraining order be issued, now therefore, after hearing arguments of Harry J. Jaquith, trustee and of Clarence W. Rowley, attorney for respondents, and after due consideration of the same:

It is hereby ordered and decreed that said petition be, and it hereby is, denied.

Witness the Honorable Francis C. Lowell, judge of the said court, and seal thereof, at Boston in said district, on the 21st day of February, A. D. 1901.

[SEAL.] F. S. FISKE,
Deputy Clerk.

15 *Petition of Trustee for Rehearing and Order Thereon.*

Filed in court Feb. 28, 1901.

District Court of the United States, District of Massachusetts.

In the Matter of W. S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

Petition of trustee for rehearing of petition for injunction *vs.* Rowley *et al.*

Respectfully represents H. J. Jaquith, that he is trustee in the above-entitled case, that his petition to have C. W. Rowley, E. F. Flanders, E. W. Thayer and Joseph P. Silsby, Jr., enjoined from prosecuting judgment *vs.* the bankrupt and paying over money alleged to belong to the bankrupt's estate involve the question of the jurisdiction of this court, and that the decision of this court is against the claim of jurisdiction alleged by your petitioner, wherefore your petitioner prays that he may be granted a rehearing on his aforesaid petition and may be allowed to introduce further evidence on the question of jurisdiction and to reargue said question.

H. J. JAQUITH, *Trustee.*

The foregoing petition is hereby granted.
By order of court, this 2nd day of March, A. D. 1901.

F. S. FISKE,
Deputy Clerk.

16 UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

[SEAL.] The President of the United States of America to the marshal of our district of Massachusetts, or to either of his deputies, Greeting:

We command you that you summon Clarence W. Rowley and Joseph P. Silsby, Jr., both of Boston in the district of Massachusetts, and Emily W. Thayer of Shirley and Edwin F. Flanders of Shirley in said district, (if they may be found in your precinct), to appear before the district court of the United States, to be holden at Boston, within and for the Massachusetts district, on Monday the eighteenth day of March, A. D. 1901, at two o'clock p. m., then and there to show cause, if any they have, why an injunction should not issue against them restraining them from collecting any judgment or levying any execution, or paying over any money held as security in the suits of E. W. Thayer and E. F. Flanders *vs.* W. S. Franklin a bankrupt duly adjudicated such by this court, as prayed for by Harry J. Jaquith, the trustee of said bankrupt estate duly appointed by this court in the bill of complaint this day filed in said court.

Hereof fail not, and make due return of this writ, with your doings thereon, into our said court.

Witness, the Honorable Francis C. Lowell, at Boston aforesaid,

the 4th day of March in the year of our Lord one thousand nine hundred and one.

F. S. FISKE,
Deputy Clerk.

(*Marshal's Return.*)

UNITED STATES OF AMERICA, *Massachusetts District*, } ss:

BOSTON, *March* 9, 1901.

Pursuant hereunto, I have this day summoned the within-named Edwin F. Flanders, to appear before the district court of the United States, as within directed, by leaving at his last and usual place of abode at Shirley, in hand to W. H. Dodge the person I found in charge, a true and attested copy of this precept. I made no further service of the within precept, by order of counsel.

ALBERT TUTTLE,
Deputy U. S. Marshal.

Fees.

Service	$2.00
Ex. in lieu of travel	3.35
	$5.35

17 *Motion of Trustee to Amend Petition for Restraining Order and Order Thereon.*

Filed in court March 18, 1901.

District Court of the United States, District of Massachusetts.

In the Matter of W. S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

MOTION OF TRUSTEES TO AMEND PETITION
vs.
E. W. THAYER ET AL.

Now comes H. J. Jaquith, trustee, in the above-entitled action and asks leave to amend his said petition, by striking out the prayers and substituting, therefor the following prayers,—

1. That said C. W. Rowley, E. W. Thayer, and E. F. Flanders, be permanently enjoined from collecting said judgments or making any levy under said executions, or taking any further proceedings under either said judgments or executions.

2. That said Joseph P. Silsby, Jr., be ordered to pay over to the trustee, the funds deposited in his hands, by the bankrupt.

3. That the said E. W. Thayer and E. F. Flanders, be ordered to appear before Lewis G. Farmer, Esq., the referee in bankruptcy, to whom the case of W. S. Franklin, bankrupt, has been referred and prove their claims against his estate and establish their liens, if any, upon the funds paid over to the trustee, by the aforesaid Joseph P. Silsby, Jr.

4. And for such other and further relief as may seem meet to this court.

H. J. JAQUITH,
Trustee, pro Se.

Upon the foregoing motion, after hearing the trustee, and counsel for respondent, it is hereby ordered that said motion be, and it hereby is, allowed. By order of court, March 18, 1901.

F. S. FISKE, *Dep. Clerk.*

18 In the District Court of the United States for the District of Massachusetts.

In the Matter of WILLIAM S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

At Boston, in said district, on the 18th day of March, A. D. 1901, upon the petition of Harry J. Jaquith, trustee in bankruptcy in the above-named matter, filed in the office of the clerk of said court on the 11th day of February, A. D. 1901, and the amendment thereto filed in said office and allowed by the court, on the 18th day of March, A. D. 1901, now therefore, after hearing arguments of Harry J. Jaquith, trustee, and of Clarence W. Rowley, attorney for respondents, and after due consideration of the same.

It is hereby ordered that said petition be, and it hereby is, denied, for want of jurisdiction, that thereupon, in open court, the aforesaid trustee prayed an appeal from said order denying trustee's petition.

Witness the Honorable Francis C. Lowell, judge of the said court, and seal thereof, at Boston in said district, on the 18th day of March, A. D. 1901.

[SEAL.]

F. S. FISKE,
Deputy Clerk.

19

EXTRACT FROM SCHEDULE A. (3) No. —.

Creditors Whose Claims are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor . The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to ledger or voucher.	Names of creditors.	Residence (if street and number are unknown, that fact must be stated.)	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount.
					c.
	Edwin F. Flanders...	Shirley, Mass., no street..	1897—New Bedford, Mass..	Contracted, if — all, as agent of Annie E. Adams; witness fees in Adams & Swift disputed.	$100
	Emerly W. Thayer...	Shirley, Mass., no street..	1897—New Bedford, Mass..	Contracted, if at all, as agent of Annie E. Adams; witness fees in Adams & Swift disputed.	150

20 *Trustee's Petition for Appeal.*

Filed in court Apr. 1, 1901.

District Court of the United States, District of Massachusetts.

In the Matter of W. S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

Petition of trustee for appeal.

To the honorable the district judge of the United States for the district of Massachusetts:

And now comes Harry J. Jaquith, the trustee in the above bankruptcy case and complains that manifest error hath happened to the great damage of your petitioner in the record and final judgment of this court on his petition to have C. W. Rowley, E. W. Thayer and E. F. Flanders enjoined from further proceedings in the courts of the State of Massachusetts against the bankrupt and from enforcing a judgment and execution there obtained against his estate, and to have J. P. Silsby, Jr., ordered to pay to the trustee property of the bankrupt in his hands.

Wherefore your petitioner prays that he may be allowed to appeal to the Supreme Court of the United States to the end that said error may be corrected and full and speedy justice done in this behalf.

And your petitioner files herewith an assignment of error which sets out separately and particularly each error asserted and intended to be urged.

HARRY J. JAQUITH,
Trustee pro Se.

Apr. 2, 1901.—Allowed.

FRANCIS C. LOWELL,
U. S. Dist. Judge.

21 *Assignment of Errors.*

Filed in court April 1, 1901.

District Court of the United States, District of Massachusetts.

In the Matter of W. S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

PETITION FOR INJUNCTION
vs.
ROWLEY ET AL.

Assignment of errors by appellant.

To the honorable the district judge of the United States for the district of Massachusetts:

And now comes Harry J. Jaquith, trustee of the aforesaid bankrupt estate and says that in the record and final judgment in the above-entitled proceedings there is error, in this, to wit:

1. That the final judgment denied the jurisdiction of this court to permanently enjoin a creditor of the bankrupt who has proved her debt in the bankruptcy court from collecting a judgment or levying an execution recovered in a State court upon such debt.

2. That the final judgment denied the jurisdiction of this court to permanently enjoin a creditor of the bankrupt who has not proved his debt in the bankruptcy court from collecting a judgment or levying an execution recovered in a State court upon such debt.

3. That the final judgment denied the jurisdiction of this court over controversies between the trustee and a third person in the possession of property alleged to belong to the bankrupt, it being also alleged that said third person has no beneficial interest in the said property, but has the sole duty of paying or delivering it over in settlement of the debts of the bankrupt.

4. That the final judgment denied the jurisdiction of this court to entertain jurisdiction of proceedings on a petition by a trus-
22 tee in bankruptcy to recover property alleged to belong to the bankrupt but held under a claim of lien or security by the bankrupt's creditor or by third party for the benefit of said creditor.

5. That the final judgment denied the jurisdiction of this court over this petition as it now stands on record.

HARRY J. JAQUITH,
Trustee, pro Se.

23 District Court of the United States, District of Massachusetts.

In the Matter of WILLIAM S. FRANKLIN, Bankrupt. No. 3327. In Bankruptcy.

Certificate.

LOWELL, *J.*:

In the above-entitled case, a rehearing having been granted and the petition having been amended, I certify that the defendants appeared before me, and in open court objected to the jurisdiction of this court, and that I thereupon dismissed the petition and denied the prayer thereof for want of jurisdiction only. To the end that the Supreme Court may be fully advised in the premises, I certify further that the following questions arose before me, namely:

1. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankruptcy act of 1898, control and limit the jurisdiction of the several district courts of the United States, so that said courts cannot permanently enjoin a creditor of the bankrupt who has proved his debt in the bankruptcy court, from collecting a judgment recovered in the State court and from making levy under an execution taken out on said judgment; and do they limit the jurisdiction of the said courts so that these courts may not require said creditor to submit the controversy to their judgment?

2. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankruptcy act of 1898, control and limit the jurisdiction of the several district courts of the United States, so that said courts cannot permanently enjoin a creditor of the bankrupt who has not proved his debt in the bankruptcy court,

24 from collecting a judgment recovered in the State court, and from making levy under execution taken out on said judgment; and do they limit the jurisdiction of the said courts so that these courts may not require said creditor to submit the controversy to their judgment?

3. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankruptcy act of 1898, control and limit the jurisdiction of the several district courts of the United States over controversies between the trustee and a third person in the possession of property alleged to belong to the bankrupt, it being also alleged that said third person has no beneficial interest in the said property, but has the sole duty of paying or delivering it over in settlement of the debts of the bankrupt?

4. Can the district court of the United States entertain jurisdiction of proceedings on petition by a trustee in bankruptcy to recover property alleged to belong to the bankrupt, but held under a claim of lien or security by the bankrupt's creditor, or by third parties for the benefit of said creditor?

5. Can the district court for the district of Massachusetts take jurisdiction over this suit as it now stands on record?

FRANCIS C. LOWELL,
U. S. District Judge.

25 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Massachusetts,* } *ss:*

I, Frank H. Mason, clerk of the district court of the United States for the district of Massachusetts, certify that the foregoing are true copies of the following papers filed in said court in the cause in bankruptcy:

WILLIAM S. FRANKLIN, Bankrupt. No. 3327.

Trustee's petition in equity *vs.* C. W. Rowley *et al.*
Order of notice thereon and marshal's return.
Opinion of court on trustee's original petition.
Order dismissing petition.
Petition of trustee for rehearing and order thereon.
Order of notice on petition for rehearing and marshal's return.
Motion of trustee to amend original petition and order thereon.
Order dismissing petition on rehearing and memorandum of appeal.
Trustee's petition for appeal.
Trustee's assignment of errors.
Together with the
Certificate of the court upon the questions raised.

And I further certify that the extract from the bankrupt's schedule is correctly copied from said schedule, the remainder of said schedule, having no connection with the matter, being omitted.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said district, this 3d day of April, A. D. 1901.

[Seal of the District Court, Massachusetts.]

FRANK H. MASON, *Clerk.*

Endorsed on cover: File No. 18,115. Massachusetts, D. C. U. S. Term No. 297. Harry J. Jaquith, trustee in bankruptcy of William S. Franklin, bankrupt, appellant, *vs.* Clarence W. Rowley, *et al.* Filed April 13th, 1901.